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September 14, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket No. 93-212

Dear Mr. Caton:

Transmitted herewith on behalf of Group H Broadcasting Corporation, licensee of television broadcast station WYED, Channel 17, Goldsboro, North Carolina, are an original and four copies of its Reply Comments in the above-referenced rulemaking proceeding. A facsimile copy of the Declaration of Dea Martin is included with these Comments as Attachment 5. The signed original of the declaration will be filed with the Secretary's office upon receipt by counsel.

Should there be any questions concerning this matter, please contact the undersigned.

Respectfully submitted,


David S. Keir

DSK/mem
Enclosures

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BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Amendment of Section 76.51)
of the Commission's Rules to)
Include Goldsboro, North)
Carolina in the Raleigh-Durham,)
North Carolina, Television Market)

MM Docket No. 93-212

To: Chief, Mass Media Bureau

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF GROUP H BROADCASTING CORPORATION

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September 14, 1993

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SUMMARY

In response to the Petition of Group H Broadcasting Corporation ("Group H"), the Commission has proposed modifying FCC Rule 76.51 to add the community of Goldsboro to the Raleigh-Durham market. Such a change will promote the purpose of the rule by equalizing competitive conditions in the market, where Group H's Goldsboro television station WYED serves an area virtually identical to that served by the television stations licensed to Raleigh and Durham, and pays the same rates as these stations for syndicated programming.

Opposing commenters have largely ignored the purpose of the rule and have narrowly focused on peripheral or irrelevant issues, in several cases inaccurately portraying either the required showing for market designation, or the consequences of granting the change sought by Group H. Despite these unfounded protestations, it is indisputable that the stations licensed to Raleigh, Durham and Goldsboro are serving the same potential audience, and are part of the same market. WYED competes for over-the-air viewers and advertising dollars throughout this market, and requires the same regulatory treatment that its competitors now enjoy.

Consistent with this market reality, WYED meets all of the criteria established by the Commission for demonstrating that stations licensed to different communities are in the same market. The three cities are geographically proximate and are

connected by a major transportation artery. More significantly, the transmitter locations of four of the five commercial stations licensed to these communities are within seven miles of each other, so that the service contours cover almost identical areas. Given this virtually concurrent area of over-the-air competition, it is harmful to both WYED and to the viewing public for the Commission's rules to apply differently to WYED, saddling it with the financial burdens of competing in a major market absent the regulatory benefits.

In the face of this strong showing, the opposing commenters have raised no credible counterargument that would justify rejection of the change sought. For example, several filers suggest either that the market modification is not necessary for copyright purposes, or alternatively, that it would have adverse copyright consequences. None of these claims is accurate. The Commission's rules do not directly affect the treatment of stations for purposes of the compulsory copyright license, a determination that lies solely within the province of the Copyright Office. Therefore, it is not possible under any circumstance for adverse copyright consequences to result from the change in the Commission's rules.

Accordingly, the Commission should act on its Notice of Proposed Rule Making by expeditiously redesignating market number 73 as Raleigh-Durham-Goldsboro.

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In the Matter of)
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Amendment of Section 76.51) MM Docket No. 93-212
of the Commission's Rules to)
Include Goldsboro, North)
Carolina in the Raleigh-Durham,)
North Carolina, Television Market)

To: Chief, Mass Media Bureau

REPLY COMMENTS OF GROUP H BROADCASTING CORPORATION

Group H Broadcasting Corporation ("Group H"), licensee of television broadcast station WYED, Channel 17, Goldsboro, North Carolina ("WYED"), hereby replies to the comments of Cablevision Industries Corp. ("CVI"), Capitol Broadcasting Company and Delta Broadcasting, Inc. ("Capitol"), and WITN-TV, Inc. ("WITN") in the captioned rulemaking proceeding.

As the Commission observed in the Notice of Proposed Rule Making, 8 FCC Rcd 4786 (MMB 1993) ("NPRM"), Group H's station WYED, which is the only television broadcast station licensed to Goldsboro, competes for audience and advertisers with television broadcast stations licensed to Raleigh and Durham. Indeed, there is scarcely a more compelling case for market redesignation, given that the Raleigh, Durham and Goldsboro stations cover virtually an identical geographical area by virtue of the location of all but one station in the de facto Raleigh-Durham antenna farm.

The existence of competition is demonstrated by the fact that Capitol, which operates WRAL-TV, Channel 5 (CBS), Raleigh, opposes Group H's request for market redesignation. The purpose of market redesignation is to eliminate regulatory anomalies and level the regulatory playing field. Capitol, which currently dominates the Raleigh-Durham television market, is obviously intent on preserving its favored position, and if it cannot prevail in the economic marketplace would happily prefer that its regulatory preference be left in place.

The Commission should disregard the pleas of those commenters who want to preserve their entrenched market power. As directed by Congress, the Commission should redesignate markets like Raleigh-Durham to add communities, like Goldsboro, with television broadcast stations that compete in the same market from an economic standpoint, but are handicapped under the Commission's current rules from a regulatory standpoint. Group H asks for no hand-outs: it only asks that it be treated like its competitors under the FCC's rules.

I. THE COMMENTERS FAIL TO ADDRESS THE UNDERLYING PURPOSE OF THE MARKET HYPHENATION RULE.

Each factor that the Commission considers in evaluating requests for market hyphenation is directed towards the underlying purpose of the market hyphenation rule -- to place television stations on a level playing field for regulatory purposes vis-à-vis other stations with which they compete

economically. See, e.g., Press Broadcasting Company, 8 FCC Rcd 94, 95 (1992); TV 14, Inc. (Rome, Georgia), 7 FCC Rcd 8591, 8592 (1992); Major Television Markets (Fresno-Visalia, California), 57 R.R.2d 1122, 1124 (1985). Section 76.51 of the Rules, which contains the list of market designations, is not itself an operative rule -- it does not proscribe or prohibit any activity. Instead, it essentially defines markets for the purpose of a number of other rules, particularly the territorial exclusivity rules in Sections 73.658, 76.92 and 76.151. The Commission updates these market designations to reflect changes in the marketplace, particularly, as in this case, a change occasioned by a new station coming on the air.

Given the function of Section 76.51 -- to define markets for purposes of various territorial exclusivity rules, it is not surprising that the overriding determination that the Commission considers in market-designation proceedings is whether television stations licensed to different cities in fact compete for programming, audience and advertisers, and therefore whether the stations should be entitled to negotiate with program distributors for exclusivity in the same geographic market. See Television Muscle Shoals, Inc., 48 R.R.2d 1191, 1193 (1981). As Group H stated in its Petition, program syndicators currently charge WYED Raleigh-Durham market rates for programming notwithstanding the fact that Goldsboro is not officially part of the FCC's definition of the Raleigh-Durham market. See Petition

at 8. Paying Raleigh-Durham market rates for syndicated programming is particularly burdensome for WYED, which is a new entrant in the market attempting to build its audience, because it is unable to enjoy the competitive advantages of being within the FCC designated market.

The opposing commenters, however, have largely ignored the purpose of market designation under Rule 76.51 and issues considered relevant by the Commission. Each opposing commenter focuses, for example, on the potential copyright implications of market redesignation. See CVI Comments at 3-6; WITN Comments at 2-4; Capitol Comments at 5. Indeed, two commenters go so far as to assert that Group H's Petition was based solely on copyright concerns. See WITN Comments at 2 & 4; CVI Comments 5-6. These assertions are simply wrong. As Group H clearly stated in the initial paragraph of its Petition, the requested market redesignation is necessary "in order to align the FCC's major market television rules with the reality of the television market ... [and] facilitate equal competition among the stations in terms of cable television carriage and syndicated exclusivity..." Petition at 1.

To be sure, market designation under Section 76.51 also have implications under the copyright law. As discussed in Section IV below, the current definition of the Raleigh-Durham market has, in addition to disadvantaging Group H under the FCC's territorial exclusivity rules, also indirectly disadvantaged it

under the copyright law as against its direct competitors. But the fact that the Commission's ruling in this proceeding may have copyright implications is not reason for the Commission not to change the definition of the market for purposes of its rules.

While the Copyright Office uses Section 76.51 to determine copyright liability, it is not obligated to recognize wholesale Commission changes in market designations. Notice of Inquiry - Updates to the Major Television Market List, 58 FR 34,594, 34,595 (Copyright Office, June 28, 1993) ("Notice of Inquiry"); See also Policy Decision Concerning Federal Communications Action Amending List of Major Television Markets, 52 FR 28,362, 28,363 (Copyright Office, July 29, 1987). The Copyright Office has initiated its own inquiry concerning the compulsory license and has indicated that it will make its own determinations concerning the impact of Commission market redesignations for purposes of its rules. Notice of Inquiry, 58 FR at 34,595. Thus, CVI's argument about a possible "irreconcilable conflict" between the agencies has no merit (CVI Comments at 8-11; the two agencies have always pursued independent proceedings and are again pursuing this course in this instance. See discussion at pp. 24-27 infra.^{1/}

^{1/} CVI asserts that the proposed market redesignation will impact the signal carriage requirements for cable systems within the Raleigh-Durham ADI. CVI Comments at 6. This characterization is particularly misleading. First, Goldsboro is already within the Raleigh-Durham ADI. Thus, the criteria listed for ADI modification are wholly
(continued...)

As shown in Group H's Petition, and as further demonstrated herein, Goldsboro is entitled to be recognized as part of the Raleigh-Durham market. Goldsboro falls within the economic market dominated by these larger cities and WYED, licensed to Goldsboro, both serves and competes for advertising dollars within the same area as the stations licensed to Raleigh and Durham.

**II. GOLDSBORO IS PART OF THE RALEIGH-DURHAM
TELEVISION MARKET.**

A "hyphenated market" is a television market that contains more than one major population center supporting all stations in the market, with competing stations licensed to different cities within the market area. See Cable Television Report and Order, 36 F.C.C. 2d 143, 176 (1972). As demonstrated in the Petition, Goldsboro should be included in the Raleigh-Durham market under this definition because it serves an area

¹/ (...continued)

irrelevant to this proceeding. Second, under the new must carry rules, since Station WYED is in the same ADI as Carrboro and Hillsborough, it can presently assert must-carry status on CVI's systems provided it supplies an adequate signal and is considered "local" or agrees to indemnify CVI for any copyright liability incurred. See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 2965 (1993) (Revised FCC Rules § 76.55(e) and § 76.56(b)). Lastly, CVI contends that "redesignation of the market will force CVI to remove a channel that subscribers value and expect to receive, and replace it with WYED." CVI Comments at 6. According to the 1993 edition of Television & Cable Factbook, however, CVI's system serving Carrboro and Hillsborough has a channel capacity of 60 channels, 22 of which are available but not presently in use. Television & Cable Factbook, Cable Vol. D-1162 (1993).

that is encompassed entirely by the signals of the major Raleigh and Durham stations and therefore competes with these stations throughout its service area. See Petition at 2-4 and Exhibits 1 and 2 thereto. Other media recognize this market reality; for example, both the Raleigh and Durham daily newspapers include WYED in their program listings of local broadcast television stations. See Attachments 1 and 2 to this Reply.^{2/}

A. Station WYED Serves the Same Geographic Area as Stations Licensed to Raleigh and Durham.

It is indisputable that television stations in Raleigh, Durham and Goldsboro serve substantially the same areas due to the proximity of their transmitter locations. As noted in the NPRM, Group H has shown that WYED's signal covers substantially all of the communities served by the Raleigh-Durham stations (WTVD, WRAL-TV, WLFL-TV and WRDC-TV). The geographic proximity of the Raleigh, Durham and Goldsboro stations is of considerable importance under relevant Commission precedent, given the fact

^{2/} It should be noted that WITN's claim that it is also included in local Raleigh-Durham television listings is inaccurate. See WITN Comments at 8. Although both the Raleigh-Durham and Greenville-Washington-New Bern markets may be included in the same regional edition of TV Guide, the local newspapers in Raleigh and Durham include in their broadcast television listings only the four network affiliates licensed to Raleigh and Durham; WYED, Goldsboro; WUNC, the public television station licensed to Chapel Hill; and WKFT, Channel 40, an independent station licensed to Fayetteville (The News & Observer, which is published in Raleigh, also includes network affiliates from the neighboring Greensboro/Winston-Salem/High Point market). See Attachments 1 and 2.

that the Commission has long recognized television as "an area-wide rather than a localized service." St. Louis Telecast, Inc., 22 F.C.C. 625, 713 (1957). This regional character is dictated by the basic economics of television station operation, which "involve considerably greater capital investments [than radio stations], and require larger audiences to attract more advertising revenues." Cleveland Television Corp., 91 F.C.C. 2d 1129, 1137 (Rev. Bd. 1982), rev. denied, FCC 83-235 (1983), aff'd 732 F.2d 962 (D.C. Cir. 1984). Thus, television stations licensed to smaller cities, such as Goldsboro, while directly serving that local community, must also attract audiences and advertisers from surrounding areas to achieve economic viability. As shown in Group H's Petition, and as discussed in the next section, WYED attracts significant viewership and advertising revenue from the surrounding areas, especially Raleigh and Durham.

B. Station WYED Relies on and Competes for Raleigh-Durham Advertisers.

Contrary to the assertions of Capitol (see Capitol Comments at 2-3), designation of communities as part of the same television market does not require mutual or equal dependency among advertisers and media outlets in each city, but simply requires that competition for advertising dollars exist among stations licensed to different cities within the market area. In fact, Capitol's admission that a Goldsboro business currently

purchases advertising time on its station, WRAL-TV, Raleigh, indicates both that WRAL-TV does receive some economic support from the Goldsboro area and that Goldsboro businesses consider Raleigh part of their market.^{3/} See Capitol Comments at 2-3. That only one Goldsboro business advertises on WRAL may either be a function of Goldsboro's size -- it is a smaller city than Raleigh or Durham -- or WRAL-TV's high advertising rates -- it is the dominant station in the market.

Moreover, while Capitol's station WRAL-TV may not rely economically on Goldsboro advertisers, Group H's WYED is utterly dependent upon Raleigh-Durham advertisers. Over fifty of WYED's local on-air advertisers are from the Raleigh-Durham area, representing more than half of its current local accounts. The substantial number of Raleigh and Durham businesses advertising on WYED demonstrates that to the advertising community it competes in the Raleigh-Durham market. These businesses clearly rely on WYED as an affordable way of reaching an audience through the television medium.

^{3/} WITN, licensed to Washington, North Carolina, alleges that it maintains a local sales person in Goldsboro, while WYED does not. This claim is inaccurate, in addition to being irrelevant to the issue of the proper market designation for Goldsboro. Group H, in fact, has a sales person who works out of his home in Goldsboro. See Attachment 3. Moreover, while Station WYED itself may not have an office in Goldsboro, WYED's parent, Beasley Broadcast Group, maintains its corporate office in Goldsboro.

To be sure, Goldsboro is a smaller city than Raleigh or Durham. However, there is no barrier to small communities being paired with larger ones in the FCC's market listing. Indeed, it is the norm for smaller communities in a metropolitan area to develop interdependencies and strong economic ties with their larger, market-dominant neighbors. The current top-100 market list in Rule 76.51 is replete with hyphenated markets composed of large cities paired with smaller -- often dramatically smaller -- cities. For instance, Los Angeles (population - 3,485,398) is paired with San Bernardino (population - 164,164), Corona (population - 76,095), and Fontana (population - 87,535), three communities whose combined populations equal less than ten percent of the population of Los Angeles itself. Even more dramatically, Philadelphia (population - 1,585,577) is paired with Burlington, New Jersey (population - 9,835). And, just a few months ago, the Commission redesignated the market centered on Atlanta, Georgia (population - 394,017), to include Rome, Georgia (population - 30,326).

In comparison, Raleigh has a population of 207,951, Durham has a population of 136,611, and Goldsboro has a population of 40,709.^{4/} It is readily apparent that the size disparity between Goldsboro and Raleigh or Durham is far less than those for several multi-city markets already designated

^{4/} Rand McNally Road Atlas, pp. 119-27 (1992 edition) (all figures based on 1990 Census populations or latest available estimates).

under FCC rules. The fact that the smaller community in such hyphenated markets is likely to rely on the larger community to a greater extent than the larger community relies on the smaller community is hardly debatable or relevant. None of these markets could satisfy the "mutual dependency" standard that Capitol has concocted.

In view of the fact that Station WYED competes daily with Capitol's WRAL-TV in Raleigh or Durham, it is clear that Capitol's opposition to Group H's Petition is driven by anticompetitive motivations. As mentioned above, Capitol's WRAL-TV, Channel 5 (CBS), is the dominant station in the market. Capitol is obviously worried about upstarts like Group H's WYED and obviously wishes to perpetuate and strengthen its market dominance by handicapping in any way possible the ability of other stations to serve the Raleigh-Durham-Goldsboro market on even terms.^{5/}

^{5/} The motivations of Delta Broadcasting, Inc. ("Delta"), which joined with Capitol in opposing Group H's Petition, are also transparent. Delta is the licensee of WKFT, Channel 40, Fayetteville, North Carolina, another major city in the Raleigh-Durham ADI. Since Delta's WKFT serves substantially the same area as Group H's WYED, one questions why Delta does not join in requesting designation of the market as Raleigh-Durham-Goldsboro-Fayetteville. The answer may be that Delta is less certain of its ability to demonstrate that Fayetteville is part of the Raleigh-Durham market. Or it may be that Delta's Station WKFT is like Group H's WYED, a traditional independent station -- in fact, WKFT and WYED are the only two traditional independents in the market. Delta may also therefore be motivated by anticompetitive reasons.

**C. Capitol's WRAL-TV Treats Goldsboro
as Part of the Market.**

Capitol further alleges that Goldsboro is not part of the Raleigh-Durham market because Group H did not demonstrate a "cultural, social, economic, demographic, or other particular commonality" between Goldsboro and Raleigh-Durham. Capitol Comments at 4. Cultural, social and demographic homogeneity, however, are not required to constitute an economic market. For instance, Westchester County, Greenwich Village and Linden, New Jersey are all within the greater New York City market, yet they are very different from cultural, social and demographic standpoints. Likewise, the Washington, D.C. market encompasses such culturally and socially diverse areas as Anacostia, Adams Morgan, Georgetown, Potomac, Maryland, and Springfield, Virginia, among many others. Thus, the cultural, social, and demographic factors alleged to be nonexistent by Capitol were not addressed because the factors have no relevance to the Commission's determination of what constitutes an economic market.

Finally, contrary to Capitol's assertion that it does not consider Goldsboro part of its market, and that WRAL-TV does not air news or public affairs programming geared to Goldsboro (see Capitol Comments at 4), WRAL actually has presented two evening news stories with a Goldsboro focus in just the last few

weeks, since the filing of its Opposition. ^{5/} On August 23, 1993, WRAL's "First News" show featured a story detailing a gruesome murder at the Seymour Johnson Air Force Base in Goldsboro. See Attachment 4 (videotape). WRAL's coverage included live interviews with Goldsboro Police Chief Jackie Warrick and Major Wes Davis, an Air Force spokesperson. During the same week, WRAL's evening news also featured a story on Money magazine's annual survey of the best places to live in the United States -- which ranked Goldsboro sixth. WRAL's coverage included live interviews with Goldsboro residents, with Rex Hammond, president of the Goldsboro Chamber of Commerce, and with Richard Eisenburg of Money magazine. Eisenburg stated that "Goldsboro does so well largely because it is so close to Raleigh-Durham-Chapel Hill." Id.

**III. GOLDSBORO MEETS ALL OF THE SPECIFIC CRITERIA FOR
INCLUSION IN THE RALEIGH-DURHAM TELEVISION MARKET.**

As noted in the NPRM, Group H has set forth a sufficient prima facie case for redesignation under the Commission's test for market redesignation (see NPRM at ¶ 8) based on the four factors considered by the Commission: (1) the distance between the proposed community and existing designated

^{5/} Group H notes that, despite the fact that both of these stories were widely covered in the national media, WRAL considered them to be of sufficient local interest to its viewers that it sent its own news crew to Goldsboro to conduct live interviews.

communities; (2) whether a station would be afforded expanded cable carriage rights beyond its Grade B contour; (3) the presence of a clear showing of particularized need by a station requesting a change of designation; and (4) an indication of benefit to the public from the proposed change. TV 14, Inc. (Rome, Georgia), 7 FCC Rcd 8591, 8592 (1992) (citing Major Television Markets (Fresno-Visalia, California), 57 R.R.2d 1122, 1124 (1985)). The commenters have addressed these factors only selectively, and often in a conclusory manner. When all the factors and all the facts are considered, Goldsboro fully meets the criteria for inclusion in the market now designated Raleigh-Durham.

(a) Geographic Proximity

Goldsboro is located only 51 miles from Raleigh, and the cities of Goldsboro, Raleigh and Durham are connected by U.S. Highway 70. Despite this proximity and connection by a major transportation artery, CVI claims that the "vast distance" between Goldsboro and Raleigh precludes Goldsboro from inclusion in the market, and attempts to support this conclusion by citing two Commission decisions where the FCC redesignated markets for cities which are within 35 miles of each other. See CVI Comments at 3.2/ These decisions provide no basis for CVI's apparent

^{2/} Citing Major Television Markets (Fresno-Visalia, California) 57 R.R.2d 1122 (1985); Major Television Markets (Newark, New Jersey), 47 F.C.C. 2d 752 (1974).

inference that a 35-mile distance constitutes a de facto standard where market designations are concerned.

The Commission has designated a number of other major hyphenated markets in which the population centers are considerably farther apart. For instance, in the Orlando-Daytona Beach-Melbourne-Cocoa market, Orlando is approximately 48 miles from Daytona Beach and approximately 57 miles from Melbourne.^{8/} The distance between Daytona Beach and Melbourne is approximately 72 miles.^{9/} See Major Television Markets (Orlando-Daytona Beach-Melbourne-Cocoa, Florida), 57 R.R.2d 685 (1985). Los Angeles is approximately 52 miles from San Bernardino.^{10/} In the Springfield-Decatur-Champaign, Illinois market, Springfield is approximately 82 miles from Champaign.^{11/} In the Kalamazoo-Grand Rapids-Battle Creek, Michigan market, Kalamazoo is approximately 45 miles from Grand Rapids which is approximately 50 miles from Battle Creek.^{12/} In the recently redesignated Atlanta-Rome market, Atlanta is approximately 61 miles from Rome.^{13/} In the Lincoln-Hastings-Kearney, Nebraska market, Lincoln is approximately 93 miles from Hastings and 130 miles

^{8/} Rand McNally Road Atlas, p.20-21 (1992 edition).

^{9/} Id.

^{10/} Id. at 12-13.

^{11/} Id. at 26-27.

^{12/} Id. at 46-47.

^{13/} Id. at 22-23.

from Kearney.^{14/} The 51-mile distance between Raleigh and Goldsboro and the 74 mile distance between Durham and Goldsboro are quite clearly within these parameters. In fact, Capitol's Station WRAL, licensed to Raleigh, already identifies itself as a Raleigh-Durham-Fayetteville station (Attachment 4 - videotape), and Fayetteville is approximately 55 miles from Raleigh, four miles farther than Goldsboro.^{15/}

(b) Technical Coverage

None of the commenters squarely addresses the issue of the technical coverage, perhaps because it so compellingly demonstrates the fact that WYED competes with the four Raleigh-Durham commercial television stations over its entire service area. The transmitter sites of four of the five stations licensed to Raleigh, Durham and Goldsboro are located in close proximity just off Highway 70 between Raleigh and Goldsboro -- the WYED transmitter is located less than 7 miles from the transmitters of stations WTVD, WRAL and WRDC, each licensed to Raleigh or Durham. The transmitter of the fifth station, WLFL, is about twenty miles from the WYED transmitter.

Because of this proximity, WYED's City Grade, Grade A, and Grade B contours substantially overlap with the contours of its four competitors in the Raleigh-Durham market, each of which is currently afforded the competitive advantages of being

^{14/} Id. at 58.

^{15/} Id. at 72-73.

licensed to communities in the Raleigh-Durham market. See Petition, Exhibits 1 and 2. This is precisely the type of evidence found to justify the market redesignation that added Visalia, Hanford, and Clovis to the Fresno market under FCC Rule 76.51, wherein the Commission noted that the Visalia station had an off-air audience "situated entirely within areas encompassed by the Grade B or better contours of the Fresno stations." Major Television Markets (Fresno-Visalia), 57 R.R.2d at 1124.

WITN attempts to place some significance in the fact that a few stations in adjoining markets provide either Grade A or Grade B service to Goldsboro. See WITN Comments at 7. However, because the point of the market designations contained in Rule 76.51 is to equalize competition among stations that serve the same communities, it is more significant that WYED's Grade B contour does not encompass any of the named communities in the adjoining markets, i.e., Greenville, New Bern, Washington, or Wilmington. While there is some contour overlap between the stations licensed to each of these communities and WYED, station WYED in no way competes in the same market as these stations, as they do not compete in the same communities over an area that is substantially the same. By contrast, the Grade A contours of WYED, WRAL and WRDC are almost identical, and the Grade A contours of all three of these stations are entirely encompassed by the Grade A contour of WTVD. See Petition, Exhibits 1 and 2.

(c) Particularized Need

The Fresno-Visalia-Hanford-Clovis redesignation is also instructive with respect to the need for a change in the market designation. There the Commission noted that one of the primary purposes of designating such markets was "to help smaller independent stations compete in their market." Major Television Markets (Fresno-Visalia, California), 57 R.R.2d at 1125. Like the Visalia station in that instance, Group H is currently handicapped "by its inability to obtain non-network program exclusivity against the other [market] stations," even though it pays Raleigh-Durham rates for such programming. Id. In failing to address this fact, the commenters have either misunderstood or deliberately ignored the primary purpose of the Rule and of Group H's Petition.^{16/} Group H is simply seeking to be placed on equal footing with its market competitors.

While completely ignoring the need for WYED to secure territorial exclusivity in its own market, WITN asserts that "redesignation of the Raleigh-Durham market would result in significant harm to the viewing public by enabling the Raleigh and Durham stations to extend the reach of their syndicated exclusivity and network nonduplication rights into substantial portions of the Greenville-Washington-New Bern, North Carolina

^{16/} Incredibly, WITN actually identifies Group H's "failure" to show that it has exclusive rights to any programming as a reason for not granting the Petition. See WITN Comments at 5.

market." WITN Comments at 8-9. WITN's "concern" is based on several false premises.

First, WITN maintains that the network nonduplication and syndicated exclusivity rights of Raleigh-Durham market stations would be dramatically and unreasonably extended into the Greenville-Washington-New Bern market because designated market stations are "entitled" to these rights within a 35-mile zone of any designated community within the same hyphenated market. See WITN Comments at 8. This is incorrect. Far from being an entitlement, the zone identified by WITN is an outer limit on the extent of program exclusivity which, in the case of syndicated programming, is ordinarily defined by a "geographic area agreed upon between the non-network program supplier, producer or distributor and the television station." See 47 C.F.R. § 76.151, Note (1992). WYED's current problem is that the limit on its territorial exclusivity is unreasonably constrained, preventing it from asserting exclusive rights vis-à-vis stations with which it competes. It is unreasonable to expect that any program supplier or distributor would extend exclusivity rights well beyond that market, however, because doing so would limit a supplier/distributor's ability to sell programming in the maximum number of major markets.

Second, and most significantly, WITN's ultimate claim that stations in the Greenville market could have service disrupted, due to program blackouts, is also inaccurate. See

WITN Comments at 9. Both the network non-duplication rules and the syndicated exclusivity rules contain an exception that exempts stations from blackout where their signals are significantly viewed (and in the case of syndicated programming, where they provide a Grade B signal). See 47 C.F.R. §§ 76.92(f) and 76.156(a) (1992). In WITN's case, it both is significantly viewed and provides a Grade B or better signal to all of the counties within the Greenville ADI that fall within the Goldsboro thirty-five mile zone, i.e., Craven, Duplin, Greene, Jones, Lenoir, Onslow and Pitt counties. See 1993 Cable & Station Coverage Atlas at 85-88 and Map 149; 1993 Television and Cable Factbook at A-853. Therefore, WITN will not suffer program blackouts or loss of cable carriage within its ADI under any circumstance.

Finally, even if WITN's argument were otherwise accurate, the territorial limit with respect to the Greenville-Washington-New Bern market, as defined by the note to Rule 76.151, already extends substantially into the Raleigh-Durham ADI. See 1993 Cable & Station Coverage Atlas at Map 149. Greenville-Washington-New Bern, of course, is itself a "three-headed" market, in which Greenville is situated near the boundary of the Raleigh-Durham ADI. See Rand McNally Road Atlas at 13 (1992 edition); Broadcasting and Cable Yearbook 1993 at C-190. Theoretically, at least, this means that the Greenville market stations now enjoy the "unwarranted" potential for extended